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No. 80-2049

In the Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE A. RALSTON, WARDEN, PETITIONER

v.

JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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TABLE OF AUTHORITIES

Cases:	Page
Brown v. *Carlson*, 431 F.Supp. 755	9
Brown v. *Duchesne*, 60 U.S. (19 How.) 183	4
Carter v. *United States*, 306 F.2d 283	11
Chapman v. *Houston Welfare Rights Organization*, 441 U.S. 600	4
Dorszynski v. *United States*, 418 U.S. 424	5
FTC v. *Fred Meyer, Inc.*, 390 U.S. 341	4
Kokoszka v. *Belford*, 417 U.S. 642	4
Kremens v. *Bartley*, 431 U.S. 119	13
Micklus v. *Carlson*, 632 F.2d 227	13
Montanye v. *Haymes*, 427 U.S. 236	7
Moody v. *Daggett*, 429 U.S. 78	7
Outing v. *Bell*, 632 F.2d 1144	9
Peyton v. *Rowe*, 391 U.S. 54	6
Preiser v. *Newkirk*, 422 U.S. 395	13
Richards v. *United States*, 369 U.S. 1	4
United States v. *Addonizio*, 442 U.S. 178	12
United States v. *DiFrancesco*, 449 U.S. 117	7, 8
United States v. *Munsingswear*, 340 U.S. 36	13
United States v. *Powell*, 423 U.S. 87	12
United States v. *Raines*, 362 U.S. 17	12
Watt v. *Alaska*, No. 79-1890 (Apr. 21, 1981)	4
Watts v. *Hadden*, 651 F.2d 1354	9
Weinstein v. *Bradford*, 423 U.S. 147	13

Statutes and rule:	
18 U.S.C. 3568	5
18 U.S.C. 4081	6
18 U.S.C. 4082	5, 6
18 U.S.C. 5006(e)	3
18 U.S.C. 5010(b)	11
18 U.S.C. 5010(c)	11
18 U.S.C. 5011	3, 5, 8, 9
28 U.S.C. 2255	6
Fed. R. Crim. P. (Form 25)	5

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For the most part, respondent appears not to take issue with the central arguments of our opening brief. Respondent identifies nothing in the legislative history or underlying policies of the Youth Corrections Act suggesting that Congress intended to require the Bureau of Prisons to confine an offender who has received an adult sentence with ordinary YCA offenders. He simply claims, in passing, that the YCA "clearly mandates" that he be segregated both from "non-YCA prisoners and, if necessary, from other classes of YCA prisoners" (Resp. Br. 30 n.17). We explain in our opening brief (Pet. Br.

14-15, 28-32) why this approach—segregating YCA offenders with subsequent adult sentences from all other classes of offenders—produces results that Congress could not have intended, that do not aid respondent, and that cannot possibly be required by the Act.[1] Similarly, except for an unsubstantiated speculation in a footnote,[2] respondent does not argue that Congress intended YCA treatment as preparation for an adult term of incarceration, or that Congress ever envisioned that the custodial phase of YCA treatment

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[1] In our opening brief we stated (Pet. Br. 14, 30) that at the time the district court granted him relief, respondent was one of only two inmates serving YCA sentences who were confined at the United States Penitentiary at Marion, Illinois, the most secure institution in the federal penal system. We argued in this connection that unless respondent were to be moved to a less secure institution, segregating him from both ordinary adult offenders and ordinary YCA offenders would have had the effect of placing him in nearly or strictly solitary confinement.

In fact, there were three, not two, offenders serving YCA sentences at Marion on the date of the district court's order. The statement in our opening brief was based apparently on erroneous information in the Bureau of Prisons' central computer records in Washington. The Bureau discovered the error when it sought to confirm the information with officials at Marion. We discovered this error several days before respondent's brief was due to be filed and advised respondent's counsel of it immediately. We regret the discrepancy, but we note that it is wholly immaterial to our argument.

[2] Respondent suggests (Resp. Br. 30 n.18) that YCA treatment might have a "strengthening effect" that will aid him during his adult incarceration. Essentially the same suggestion was made by the court of appeals and is answered in our opening brief (Pet. Br. 15, 33-37). Respondent offers no answers to our arguments; nor does he cite anything from the legislative history of the Act to support his assertion or show how it is consistent with the Act's underlying principles.

would culminate not in a gradual reintegration into society but in an adult prison term.

Thus respondent implicitly concedes that the history and purposes of the YCA refute his claim, and he essentially relies on the assertion that the plain language of the YCA compels the court of appeals' conclusion (Resp. Br. 13, 18-21); he echoes the court of appeals' argument that his sentence has been impermissibly "modified" or "reevaluat[ed]" (Resp. Br. 14, 20); and he attributes to the Bureau of Prisons a number of positions, which he then attacks, on issues that are not before the Court.

1. Respondent does not question our showing (Pet. Br. 18-21) that when Congress enacted the YCA it did not contemplate or specifically concern itself with the problem presented by an offender who receives a subsequent adult sentence while serving a YCA sentence. Nonetheless, respondent asserts that because he was " '*committed* * * * to the custody of the Attorney General pursuant to' " the YCA (Resp. Br. 18, quoting 18 U.S.C. 5006(e); emphasis by respondent), he is a "committed youth offender" within the meaning of the Act, and that the language of the Act entitles every committed youth offender to treatment and segregation under 18 U.S.C. 5011 for the entire length of his sentence (Resp. Br. 18-20).

Our principal answer is that because there is no indication that Congress or the drafters of the YCA had in mind the question presented by dual-status offenders when they wrote the language respondent invokes, the Court should not interpret that language in isolation from the Act's underlying purposes. "When 'interpreting a statute, the court will not look merely to a particular clause * * * but will

take in connection with it the whole statute * * * and the objects and policy of the law * * * and give to it such a construction as will carry into execution the will of the Legislature * * *.'" *Kokoszka* v. *Belford*, 417 U.S. 642, 650 (1974), quoting *Brown* v. *Duchesne*, 60 U.S. (19 How.) 183, 194 (1857). The Court has said that "in all cases of statutory construction, our task is to interpret the words of the[] statute[] in light of the purposes Congress sought to serve" (*Chapman* v. *Houston Welfare Rights Organization*, 441 U.S. 600, 608 (1979)), and that it is "fundamental that a section of a statute should not be read in isolation from the context of the whole Act, and that in fulfilling our responsibility in interpreting legislation, 'we must not be guided by a single sentence or member of a sentence, but [should] look to the provisions of the whole law, and to its object and policy'" (*Richards* v. *United States*, 369 U.S. 1, 11 (1962); footnotes omitted). The Court "cannot, in the absence of an unmistakable directive, construe the Act in a manner which runs counter to the broad goals which Congress intended it to effectuate." *FTC* v. *Fred Meyer, Inc.*, 390 U.S. 341, 349 (1968). See also *Watt* v. *Alaska*, No. 79-1890 (Apr. 21, 1981), slip op. 6-7.

In our opening brief, we show that attempting to afford respondent segregation and treatment as if he were an ordinary YCA offender would be inconsistent with the purposes of the Act and would produce results that Congress could not have intended. But even if the Court were to consider the language of the YCA in isolation, as respondent urges, that language does not compel the result respondent seeks. Respondent's textual argument leads

equally well to the conclusion that an offender who receives a *concurrent* adult sentence while serving a YCA term remains a "committed youth offender" entitled to treatment and segregation under 18 U.S.C. 5011. It is wholly implausible to suppose that such an offender must be treated as a YCA offender and not an adult,[3] but this implausible result can be avoided only by looking beyond the text of the YCA.[4]

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[3] Among other things, such an interpretation of the Act would effectively deny judges the power to impose concurrent adult sentences on offenders serving YCA terms, despite the Congress's clear intention—which both respondent and the court of appeals emphasize (*e.g.*, Resp. Br. 14)—that the YCA not restrict a sentencing judge's discretion. See *Dorszynski* v. *United States*, 418 U.S. 424, 436-442 (1974).

[4] Nor can respondent argue that it is sufficient to "read together" the text of the YCA and the text of the statutes governing adult sentences. First, any effort to read the YCA together with another statute involves acknowledging that the text of the YCA does not solve the problem and that the statutes' underlying purposes must be considered; respondent all but concedes that such an acknowledgement would be fatal to his claim. In any event, read literally, the statutes governing adult sentencing appear to make respondent a "committed" adult offender under 18 U.S.C. 4082, the statute giving the Attorney General broad discretion over the conditions of confinement of adult offenders. At the point respondent was sentenced as an adult, the court entered a judgment ordering that respondent be "committed to the custody of the Attorney General" (Form 25, Fed. R. Crim. P.). That respondent has not yet begun to serve his adult sentence does not mean he has not been committed to the custody of the Attorney General pursuant to that sentence; under 18 U.S.C. 3568, a sentence "shall commence to run from the date on which [the offender] is received at the penitentiary * * * for service of such sentence," making it clear that the date of commitment to the custody of the Attorney General is dis-

We do not contend that the language of the Act, in isolation, favors our position—simply that it is inadequate to resolve the issue in this case. In our view, the conclusion is inescapable that the language of the Act was not drafted with an eye to the problem of the dual-status offender who has had both a YCA and an adult sentence imposed on him, and to solve that problem the Court must look beyond the text to the Act's purposes.

2. Respondent asserts (Resp. Br. 20, 26) that we rely on the supposed power of the Bureau of Prisons, or of the judges who imposed his adult sentences, to "overturn," "reevaluat[e]," or "override" respondent's YCA sentence. Respondent argues that the exercise of this power violates both the YCA (Resp. Br. 24-27) and the Double Jeopardy Clause (Resp. Br. 33-34).

As we explained in our opening brief (Pet. Br. 37-38), assertions that this case involves a revocation or modification of a sentence misconceive the issue. It is true that when respondent received an adult sentence, the Bureau of Prisons altered the conditions of his custody; but altering the conditions of a prisoner's custody does not constitute "review[ing]" or "modif[ying]" (Resp. Br. 14) his sentence. The Bureau routinely alters the conditions of prisoners' custody, for example when it moves them from one facility to another (see 18 U.S.C. 4081, 4082); it is clear that such actions do not constitute an impermis-

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tinct from the date on which an offender begins to serve his sentence. Moreover, *Peyton* v. *Rowe*, 391 U.S. 54 (1968), indicates that respondent is apparently "in custody under [the adult] sentence" for purposes of attacking it collaterally under 28 U.S.C. 2255, even though he has not yet begun to serve that sentence.

sible modification of a sentence, so long as "the conditions or degree of confinement to which [a] prisoner is subjected [by the Bureau of Prisons] is within the sentence imposed upon him." See *Montanye* v. *Haymes*, 427 U.S. 236, 242 (1976); *Moody* v. *Daggett*, 429 U.S. 78, 88 n.9 (1976). See also *United States* v. *DiFrancesco*, 449 U.S. 117, 137 (1980); *id.* at 148 (Brennan, J., dissenting) (decisions to revoke parole or probation do not constitute an impermissible revision or modification of a sentence because they are within the contemplation of the sentence already imposed.)

Thus the question in this case concerns the nature of the limitations imposed by respondent's YCA sentence; in particular, the question is whether Congress intended a YCA sentence to confer on an offender sentenced as an adult the right to be confined with ordinary YCA offenders or the right to a form of treatment plainly not designed for those awaiting adult incarceration. If, as we argue, it is inherent in a YCA sentence that the requirements of YCA treatment and segregation do not survive a subsequent adult sentence, then respondent was subject to no increase or change in his original sentence. This is the issue we address in our opening brief; discussion of reviewing, revoking, or overturning a sentence only beclouds the issue.[5]

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[5] Respondent also suggests that there is a double jeopardy problem in this case because the conditions of his custody were modified after he began to serve his sentence. But even the dissenters in *United States* v. *DiFrancesco*, *supra*, —who took the position that increasing a sentence on appeal violates the Double Jeopardy Clause—said that parole or probation revocation is permissible precisely *because* it is "predicated on a defendant's activity since imposition of the

3. Respondent repeatedly attributes to us positions that our principal brief does not adopt on issues that are not before the Court. For example, respondent asserts that our position "must be" that offenders guilty of "serious offenses, or more than one offense, are not to be treated as YCA offenders" (Resp. Br. 15); that the Bureau of Prisons believes the term "[i]nsofar as practical" in 18 U.S.C. 5011 "frees [it] to ignore the segregation requirement whenever [it] concludes that such segregation is administratively inconvenient or in conflict with [its] penological philosophy" (Resp. Br. 27-28); that we are "of the opinion that only 'good' prisoners are deserving of rehabilitative treatment" (Resp. Br. 17-18); that the Bureau applies the YCA "only to those who commit minor offenses or are model prisoners" (Resp. Br. 16); and that the Bureau wishes "to deny YCA treatment to troublesome cases" (Resp. Br. 21).[6] The central fact of this case, however, is not that respondent has committed three serious offenses or that he is a major disciplinary problem—although these things are true—but that respondent has received an adult prison sentence. The YCA does not give adult offenders a right to be confined with ordinary YCA offenders, and Congress did not intend YCA treatment as preparation for a period of adult confinement. Respondent's answers to the various argu-

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original sentence" (449 U.S. at 148 (Brennan, J., dissenting)). A change in the conditions of custody is even less of a "modification" of a sentence than parole revocation.

[6] In this case, we have not chosen to assert that the Bureau has these powers, but it is worth recalling that correctional authorities in the English Borstal system—after which the YCA was indisputably modeled—had such powers. See Pet. Br. 24.

ments he attributes to us do not even address these fundamental policies of the YCA.

The extraneous issues that respondent attempts to raise have been the subject of litigation in other cases in the lower courts; we so advised this Court in our opening brief (see Pet. Br. 22-23 n.15, 25-26 n.16, 28 n.17). While we of course do not take the extreme views on these issues attributed to us by respondent, we do believe, as we advised the Court, that some lower court decisions have gone too far in denying the Bureau the flexibility it needs to structure effective treatment programs and to protect inmates and the public (Pet. Br. 25-26 n.16, 28 n.17). These decisions are part of the background of this case; to the extent that the Bureau's flexibility in dealing with YCA offenders has been excessively limited by the lower courts, it is even more important that offenders like respondent—for whom the YCA is so clearly not intended, and who are so clearly ill-suited to YCA treatment—not be included in the class of YCA offenders. But the reason respondent should be excluded from that class is that he has been sentenced to adult prison terms and therefore is, from the standpoint of the YCA's policies, an adult offender.

Respondent also repeatedly cites (*e.g.*, Resp. Br. 8, 12 & n.3), *Brown* v. *Carlson*, 431 F. Supp. 755 (W.D. Wis. 1977), and *Watts* v. *Hadden*, 651 F.2d 1354 (10th Cir. 1981), in an apparent effort to attack the Bureau's good faith. As we explained in our opening brief (Pet. Br. 22-23 n.15, 25-26 n.16), these cases disapproved aspects of the Bureau of Prison's interpretation of the segregation requirement found in 18 U.S.C. 5011.[7] The issue addressed

[7] Other cases have upheld the Bureau's policies. See, *e.g.*, *Outing* v. *Bell*, 632 F.2d 1144, 1145-1146 (4th Cir. 1980).

in *Brown* and *Watts* is not involved in the present case; here, our argument is that the purposes underlying Congress's preference for segregation demonstrate that that preference, whatever its precise contours as applied to ordinary YCA offenders, does not entitle an offender like respondent to be confined with YCA offenders—indeed, it suggests that he be kept away from ordinary YCA offenders—or otherwise to be segregated from adult offenders. In other words, what is at issue here is not the Bureau's interpretation of the segregation requirement, but whether respondent can invoke that requirement at all.

After the decision in *Brown*, the Bureau, as we said in our opening brief, did not seek review but instead devised a plan that increased the extent to which YCA offenders were segregated. In the wake of the recent decision in *Watts*, the Bureau is again developing a nationwide plan. The Bureau informs us that the plan is likely to call for institutions to be populated either solely by YCA offenders or solely by adult offenders.

4. Respondent asserts, three times (Resp. Br. 2, 15, 17 n.6), that he was never treated according to the provisions of the YCA, even before he received his adult sentence. So far as we know, respondent has never made this claim before, in this or any other litigation; certainly the claim has never been upheld by a court. Respondent does not even attempt to substantiate it. Nothing we are aware of suggests that respondent was treated as anything other than a YCA offender before he received his first adult sentence. In any event, the claim is wholly immaterial to this case.

5. We have already discussed respondent's double jeopardy argument (pages 7-8 & note 5, *supra*);

his other constitutional contentions are equally without merit. Respondent asserts that treating him as an adult violates the Due Process Clause because "[w]hatever process was due, [respondent] did not receive it" (Resp. Br. 35). This is a puzzling contention. As we show in our opening brief, Congress determined that adult offenders are not to be treated or segregated as if they were YCA offenders, even if they continue to serve YCA terms. Although respondent has a different view of Congress's intentions, we cannot imagine that respondent means to suggest that the decision we attribute to Congress would violate the Due Process Clause. The only remaining question is whether respondent was properly determined to be an adult offender. That determination was made by a criminal trial and sentencing—the most elaborate form of procedure known in our system, and surely sufficient to satisfy the Due Process Clause in this case.

Respondent also raises (Resp. Br. 32-33) what he terms an Equal Protection Clause argument. This argument is based on cases (*e.g.*, *Carter* v. *United States*, 306 F.2d 283, 285 (D.C. Cir. 1962)) upholding 18 U.S.C. 5010(b), the provision of the YCA that allows an offender to be sentenced to a six-year term for a crime carrying a maximum adult sentence of less than six years. Respondent does not dispute our view (Pet. Br. 45-46 n.26) that questions that might arise if such an offender received a subsequent adult sentence are not before the Court and should not be considered at this time, because respondent was sentenced under 18 U.S.C. 5010(c) to a ten-year term for a crime carrying a maximum adult sentence of life imprisonment. As we said in our opening brief, any arguments that might be available to an

offender serving a six-year term for an adult sentence with a lesser maximum are not available to respondent. See, *e.g.*, *United States* v. *Powell*, 423 U.S. 87, 92 (1975); *United States* v. *Raines*, 362 U.S. 17 (1960).

Nonetheless, respondent asserts that treating him as an adult offender violates the Equal Protection Clause because "the rehabilitative opportunities of the YCA sentence may well have been a crucial factor in the sentencing judge's decision regarding the length of the sentence" (Resp. Br. 33). It is difficult even to state this claim as an equal protection challenge, because it is not clear from what class of persons respondent believes himself to have been arbitrarily distinguished. Moreover, as we explain in our opening brief (Pet. Br. 36, 38), since respondent will begin an adult prison sentence when his YCA term ends, the best interpretation of Congress's intentions is that respondent's rehabilitative opportunities will be *enhanced* by treating him as an adult at once instead of continuing inappropriate YCA treatment, which is intended to culminate in a gradual reintegration into society. It is implausible to suggest that such a congressional judgment violates the Equal Protection Clause. In any event, even if the length of respondent's sentence was based on the sentencing judge's incorrect predictions about respondent's future behavior and the resulting actions of prison authorities—and respondent has not shown that his sentence was based on any such prediction—respondent is not entitled to relief. See *United States* v. *Addonizio*, 442 U.S. 178 (1979).

Couched in its most favorable form, respondent's equal protection argument appears to be a claim that it is somehow unfair, or improper, or in derogation of a statutory right not to accord him YCA treat-

ment for the entire length of his sentence. We anticipated this argument in our opening brief (Pet. Br. 16-17, 40-45).

6. In our opening brief we said (Pet. Br. 11 n.12) that if this case becomes moot before the Court decides it, the Court should vacate the judgment of the court of appeals and order respondent's complaint dismissed. See *United States* v. *Munsingwear*, 340 U.S. 36, 39 (1950). Respondent argues (Resp. Br. 36) that the Court should instead dismiss the writ of certiorari as improvidently granted. In cases where the Court has granted certiorari, or considers an issue worthy of plenary consideration, its consistent practice has been that which we suggest. See *e.g.*, *Kremens* v. *Bartley*, 431 U.S. 119, 126, 129 (1977); *Weinstein* v. *Bradford*, 423 U.S. 147 (1975); *Preiser* v. *Newkirk*, 422 U.S. 395 (1975). As we explained in the petition, and in our motion for expedited consideration of the petition, the court of appeals' decision created a conflict among the circuits that interfered with the ability of the Bureau of Prisons efficiently to operate an integrated correctional system. The difficulty is aggravated by two factors: two maximum security prisons, including the most secure institution in the federal system (at Marion, Illinois) are located in the Seventh Circuit; and some courts have intimated (incorrectly, in our view) that prison officials may be held personally liable if the YCA is not followed (see *Micklus* v. *Carlson*, 632 F.2d 227, 239 (3d Cir. 1980)). Respondent advances no sufficient reason, and no authority, for departing from the Court's practice and leaving intact a judgment which this Court thought worthy of review but was unable to review before it became moot.

CONCLUSION

For these reasons and the reasons stated in our principal brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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